

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

EVELYN GREENBERG, individually and on
behalf of all others similarly situated,
Plaintiff,
v.
BUCYRUS INTERNATIONAL, INC., et al.,
Defendants.

Case No. 10-cv-01103

DANIEL HIMMEL, individually and on
behalf of all others similarly situated,
Plaintiff,
v.
BUCYRUS INTERNATIONAL, INC., et al.,
Defendants.

Case No. 10-cv-01104

THOMAS TURBERG, individually and on
behalf of all others similarly situated,
Plaintiff,
v.
BUCYRUS INTERNATIONAL, INC., et al.,
Defendants.

Case No. 10-cv-01105

CITY OF STERLING HEIGHTS POLICE &
FIRE RETIREMENT SYSTEM, individually
and on behalf of all others similarly situated,
Plaintiff,
v.
BUCYRUS INTERNATIONAL, INC., et al.,
Defendants.

Case No. 10-cv-01106

**DEFENDANT CATERPILLAR, INC.'S CIVIL L.R. 7(H) EXPEDITED NON-
DISPOSITIVE MOTION TO CONSOLIDATE ACTIONS**

Defendant Caterpillar, Inc. ("Caterpillar") hereby moves under the expedited procedure of Civil L.R. 7(h) to consolidate the above four actions pursuant to Fed. R. Civ. P. 42(a)(2). The grounds for the motion are as follows:

1. These four actions were originally filed in Milwaukee County Circuit Court. The *Greenberg*, *Himmel* and *Turberg* cases were filed on November 16, 2010; the *City of Sterling Heights* case was filed on November 19, 2010. Caterpillar and Badger Merger Sub, Inc. (“Badger”) removed each action to this Court on December 8, 2010.

2. Although each action is brought by a different named plaintiff, each plaintiff allegedly is a shareholder of defendant Bucyrus International, Inc. and seeks to represent an identical class of Bucyrus shareholders. Each complaint names as defendants Bucyrus, the members of its Board of Directors, Caterpillar, and Caterpillar subsidiary Badger. In each action, plaintiff claims that the Bucyrus directors breached their fiduciary duties to the purported class and that Caterpillar and Badger aided and abetted the breach. In each action, plaintiffs seek to void the merger agreement (apparently without allowing Bucyrus shareholders to vote on it) and to enjoin defendants from consummating the merger.

3. The only substantive differences among the actions are that on December 14, 2010, plaintiffs in the *Greenberg* and *Turberg* actions filed amended complaints and added claims of violation of federal proxy law. Plaintiff in *Greenberg* also filed a Civil L.R. 7(h) motion on December 15, 2010, seeking expedited discovery. Defendants will shortly be filing oppositions to that motion.

4. The Ademi & O’Reilly law firm represents plaintiffs in the *Greenberg* and *Turberg* cases (along with other counsel), and Hale & Wagner represents plaintiffs in the *Himmel* and *City of Sterling Heights* cases (also with other counsel). It appears that the *Greenberg/Turberg* plaintiffs are vying with the *Himmel/Sterling Heights* plaintiffs for control of plaintiffs’ side of the lawsuits.

5. As noted above, these cases involve the same purported plaintiff class, the same defendants, the same underlying facts and transactions, and seek the same relief. To allow them to proceed separately -- especially with lawyers competing on behalf of the same purported class

to control plaintiffs' side of the case -- would subject defendants to multiple proceedings, potentially inconsistent demands, and unnecessary costs of defense. Consolidation would promote judicial economy and avoid piecemeal litigation. Indeed, in the stipulations for extensions of time to respond to the complaint that were filed in each case on December 15, 2010, each plaintiff indicated that he or she intends to seek consolidation of the related cases and expects that a consolidated amended complaint will be filed. *See* Dkt. 9 in the *City of Sterling Heights* case, and Dkt. 10 in the other three cases.

6. Caterpillar therefore respectfully requests that the Court consolidate these actions for all purposes.

Dated this 16th day of December, 2010.

s/Howard A. Pollack

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